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GBA Testimony – Georgia House Judiciary Committee, Feb. 1, 2010
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HB 972 – Foreclosure notification and cure process

We'd like to thank the committee for asking GBA to testify about this issue. The Georgia bankers Association represents nearly every bank operating in Georgia

House Bill 972 and its provisions are important for our members. It is important to understand that foreclosure statutes relate to more than just borrowers and their family homes. The majority of foreclosures for many of our state-based members are for loans to developers and builders for land as well as for partially-completed and fully completed but uninhabited homes and other real estate.

We knew foreclosure-related issues would be important topics this session. So, we commissioned a study to understand what relationship existed between the actual number of foreclosures and national statutory foreclosure processes.

I'd like to share three key findings of that study with the committee that we believe will be helpful in your consideration of HB 972.

1. Foreclosure does not happen overnight. There are some important facts that are not well understood or well reported.
2. Short foreclosure periods do not necessarily lead to high numbers of foreclosures. It's all about the economy.
3. Foreclosure cure rates are driven more directly by the economy than the foreclosure statutes. The state of the economy makes it harder, regardless of statutory timeframe, for a borrower to cure default.

Foreclosure does not happen overnight: Key Facts

So I'll start with some of the important facts that are not always reported. This information is important because the public needs to understand foreclosure does not happen overnight in Georgia and lenders here are flexible with borrowers to try and avoid foreclosure.

- Ten other states have statutory foreclosure processes that are shorter than Georgia's, according to a 2008 Freddie Mac Study. The timeframe in Texas is 27 days. (AL, Ark., MI, MS, MO, NH, TN, TX, VA, WVA).
- Most lenders don't consider a loan in default until it is 90 days past due (3 monthly payments missed).
- While the minimum amount of time in which a lender can bring about a completed foreclosure is 37 days, the actual average time from foreclosure notice to sale in Georgia is much higher. Freddie Mac notes that its average time in 2007 from **default** (usually not until after 90 days) to **completed foreclosure sale** was 241 days (about 8 months) in Georgia.
- In August 2008, Freddie Mac increased its own voluntary process to 300 days (about 10 months) from the date of **last paid installment** to a **completed foreclosure sale** (five months from the due date of the last paid installment to foreclosure referral, then an additional five months from the foreclosure referral to completed foreclosure sale).



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So, while Georgia's process is often described as rapid, the reality is that on average, lenders provide borrowers with significant time to become current on their loans.

Short statutory foreclosure periods don't correlate to high numbers of foreclosures

Short foreclosure periods do not necessarily cause high foreclosure rates. While Georgia has a high foreclosure rate, many states with similar foreclosure periods have LOWER foreclosure rates. And, many states with longer foreclosure periods have HIGHER foreclosure rates than Georgia's.

- Seven of the 10 states that have time periods SHORTER than Georgia's had an average 2008 foreclosure rate that was 1% LESS than Georgia's estimated 2.2%. (AL, AR, NH, TN, TX, VA, WV)
- Five states with an average foreclosure period 79 days LONGER than Georgia's timeline had an average 2008 foreclosure rate of 4.1%, much HIGHER than Georgia's 2.2%. (AZ, CA, CO, NV, OH)
- Some states have statutorily lengthened their foreclosure periods, with mixed results. For example, Maryland increased the minimum period from 34 days to 135 days. While foreclosures slowed in the short term, the foreclosure rate from Quarter 2 of 2008 through Quarter 3 of 2009 increased 58.8% (compared to an increase in Georgia of 6.7% over the same period).

No credible conclusion can be made that the percentage of loans in foreclosure in a state can be directly tied to the time for resolution. Based on this information, our view is the economy is the driving factor, regardless of the statutory process.

Cure rates and process

That brings me to some information about foreclosure cure rates and processes.

While Georgia's law does not require a statutory cure process, it is not uncommon for borrowers and lenders to attempt or reach a satisfactory resolution before a foreclosure sale occurs.

I don't have any specific facts to back this up, however, I do not feel I am exaggerating by telling you that there's not a banker I've talked to who is not willing to have serious discussions with borrowers about a way to avoid a foreclosure sale if at all possible. As one banker told me, "we've reached agreements with borrowers while we were on the way to the courthouse for the monthly Tuesday foreclosure sale."

However, that has become much more difficult in the current economy.

- According to Fitch Ratings, the cure rate of delinquent prime loans has gone from an average of 45% from 2000 – 2006 down to 6.6% in 2009 (a rate that includes mortgage modifications, which may or may not re-default).
- The cure rate has declined because the causes of default (including un- and under-employment) are less temporary than they were in previous years.

A low cure rate suggests that a lengthened foreclosure period would not necessarily be helpful to most borrowers in the current economy.



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Conclusion

In conclusion, we believe there is one central finding of this study. The severity and length of the recession and continued effects on the economy are the primary reasons for Georgia's high number of foreclosures. The evidence suggests that changes to the length or type of statutory process will not necessarily lower the number of Georgians who are having real and significant troubles meeting their loan commitments in this economy.

Other Info

- Mortgage Bankers Association info for Q309 (most current release)
 - 1.66 million Georgia Mortgages
 - 87% of Georgia mortgages being paid on time. (12.93% delinquent Q309)
 - Prime fixed-rate foreclosures 2%
 - Prime ARM foreclosure 5.8%
 - Subprime fixed 6.94%
 - Subprime ARM 14.77%
- GA Hope Now: About 221,000 mortgage mods July 2007-2009 (29 largest mortgage lenders and servicers. Includes bank initiated efforts as well as Government HAMP program)
- Estimated 13.3 percent of GA mortgages modified since July 2007
- Home Affordable Mortgage Program (HAMP): GA had sixth most trial modifications as of December report (Government mortgage modification program only). HAMP: <http://makinghomeaffordable.gov/>
- Nationally, re-defaults have been high
 - Between 18.7 percent and 33.3 percent of the loans modified since the second quarter of 2008 were 60 or more days delinquent again in three months,
 - Between 58.5 percent and 60.7 percent were 60 or more days delinquent again after 12 months
- 1-4 borrowers are underwater on their mortgages (low down payments/100% financing); valuation declines created this for homeowners – market conditions – not lenders)
- More people are deciding to go into default on purpose – strategic default
- Principal reductions are effective; however, there is a risk this could lead to more. "Moral Hazard"
- Lenders are reducing principal. Wells Fargo reduced about \$2.6 billion in principal nationally, including on loans acquired through its purchase of Wachovia. These reductions are losses directly from bank capital and reserves.
- Modifications to loans held by servicers are more difficult. Servicing agreements with investors who own the loans make that more difficult.
- "Nationally, California accounted for nine of the top 20 metro foreclosure rates, followed by Florida with eight, Nevada with two and Arizona with one." (RealtyTrac update on foreclosures nationwide 2.2010) - INTERPRETED: Not a single Georgia metro area shows up in the top 20 for foreclosures. MSAs in California, Florida, Nevada and Arizona comprise the entire top 20.